

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1384 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAHENDRA PREMCHAND SHAH

Versus

UNION OF INDIA

Appearance:

MR RK MISHRA for Petitioner
SERVED BY RPAD - (N) for Respondent No. 1
MR MANISH R BHATT for Respondent No. 2

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 29/04/99

ORAL JUDGEMENT

Heard Learned Counsel for the petitioner as well as Learned Counsel for the respondent. The challenge is to the order made by the designated Authority dated 27.1.99 by which amount payable under Section 88 of the Finance No.2 Act of 1998 was determined at Rs.129204/- viz.a.viz tax arrears of Rs.492759/-. Learned Counsel

for the petitioner contends that the computation of amount payable by the petitioner is erroneous in as much as the tax arrears contain partly the amount in respect of income for which 3rd party was also assessed and tax on that income has been paid by the third party and to that extent tax arrears cannot be attributed to the petitioner.

2. This contention is not well founded. The very foundation of the Kar Vivad Samadhan Scheme (KVSS) was envisaged under the Finance Act (No.2) of 1998 with twin object to collect the arrears which have been clogged on account of pendency of litigation. It has to be seen that necessary pre-condition before the scheme can be operated is that there must be a lis pending whether by way of appeal, reference or writ petition or by way of revision under the relevant provisions of the Act to which the tax arrears relate. It is another condition that the tax arrears as defined under Section 87 (m) has direct nexus with the determination of tax made under the relevant enactment on or before 31.3.98, as modified by the appellate order that is to say determination of tax liability in the same way has to be prior to the said date 31.3.98 and as on the date declaration is made, unpaid amount out of such determined liability as modified upto that time is to be considered as 'tax arrears' for the purpose of operating the scheme that can only be considered when a dispute is pending before the Higher Authorities. The affect of the scheme is that without reference to merit of dispute that is pending, the amount payable against the tax arrear be decided by the designated authority. On payment of such amount, the dispute, wherever it is pending, comes to an end whether by deemed withdrawal of appeal or revision pending at the instance of the assessee when the same is before any of the authority constituted under the statute, or the assessee is required to withdraw such proceedings if they are pending before the High Court or the Supreme court. Therefore, there is no room under operation of KVS to examine the merits of the amount of 'tax arrears' with reference to the merit of pending dispute or the liability of the assessee in respect of tax. Such liability has already been decided under the provisions of the Act, though the same may be disputed. It is the settlement of such dispute by reducing the liability to pay arrears of such disputed sum is at the bottom of the scheme. The assessee's contention precisely seek to raise that issue about validity of determination of its tax liability, which is contrary to the basic character of the scheme. He who seeks to take advantage of a beneficial scheme, must either accept it as it is or

leave it.

3. We do not find any merits in the petition and it is summarily rejected. Notice is discharged.

jitu